

Complaint

94 F.T.C.

IN THE MATTER OF
FORBES HEALTH SYSTEM MEDICAL STAFF

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-2994. Complaint, Oct. 15, 1979 — Decision, Oct. 15, 1979

This consent order, among other things, requires a Pittsburgh, Pa. medical association (Medical Staff), to cease engaging in actions having the purpose or effect of excluding from appointment to Medical Staff applicants who are associated with a Health Maintenance Organization (HMO), or who practice on an other than fee-for-service basis. The association is further prohibited from unreasonably delaying final recommendations on staff privilege applications, and from according discriminatory treatment to HMO-associated members, which may prevent them from providing effective patient care at Forbes. Additionally, respondent would be required to change its Bylaws to conform with the terms of the order.

Appearances

For the Commission; *Barbara K. Shapiro* and *James E. McCarty*.

For the respondent: *Eric F. Stoer* and *Daniel Masur*, Pittsburgh, Pa.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Forbes Health System Medical Staff has violated the provisions of Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. The Forbes Health System Medical Staff (hereinafter "Medical Staff") is an unincorporated association, organized and existing under the laws of the Commonwealth of Pennsylvania, and located at 500 Finley St., Pittsburgh, Pennsylvania. It is composed of the more than 300 medical physicians, osteopathic physicians, dentists, and podiatrists who have been granted privileges by the Forbes Health System to attend patients in the Forbes Health System.

PAR. 2. The Forbes Health System (hereinafter "Forbes") is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. The physical facilities of Forbes consist of

East Suburban Health Center and Columbia Health Center, each of which is a general hospital, and Pittsburgh Health Center, presently being converted from a general hospital to a skilled nursing center. Each of these facilities is in the greater Pittsburgh area.

PAR. 3. A "Health Maintenance Organization" (hereinafter "HMO") is an organization which, in return for advance periodic payments, accepts contractual responsibility to provide or arrange for the provision of a stated range of health care services to an enrolled population. There are two principal types of HMOs, Individual Practice Associations (hereinafter "IPA") and closed panel group practices. An IPA is an HMO generally open to participation by all members of a defined class of physicians practicing within the IPA's marketing area; usually such physicians are compensated by the IPA primarily on a fee-for-service basis. A closed panel group practice is an HMO in which participation is generally limited to a number of physicians determined by the HMO and selected by the HMO to render service to HMO enrollees on a full or part time basis; usually such physicians are compensated in substantial part without regard to the type or amount of services rendered to individual enrollees of the HMO.

PAR. 4. Except to the extent that competition has been restrained as hereinafter alleged, and depending on their specialties, physicians are in competition with each other and with HMOs, and HMOs are in competition with each other. It is important for the success of HMOs and to the successful practice of their physicians that HMO physicians be granted privileges at hospitals convenient to them and to their patients.

PAR. 5. The Medical Staff has engaged in activities relating to the economic aspects of the practice of medicine, as a result of which activities it is organized for the profit of its members within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 6. In the course and conduct of their business, HMOs and physicians in the greater Pittsburgh area charge fees and collect payments which, in substantial part, are paid directly or indirectly with federal funds or funds received interstate from insurance companies, employers, and Blue Cross and Blue Shield plans. The flow of said funds is affected by competition among physicians and HMOs in the greater Pittsburgh area and by the acts and practices of the Medical Staff and its members as hereinafter alleged, as a result of which said acts and practices are in and affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 7. Appointment to the Medical Staff is a prerequisite to regular utilization by a physician of the facilities of Forbes. Applications for appointment are reviewed by the Medical Staff, and the recommendation of the Medical Staff is usually followed by the governing body of Forbes, which makes the final decision on staff privileges applications.

PAR. 8. The Medical Staff and its members individually, collectively, and collusively delayed action upon applications for appointment to the Medical Staff and refused to recommend such appointments for the purpose, and with the effect, of preventing and forestalling competition with the Medical Staff's members and an IPA in which its members might participate from the applicants and a closed panel group practice for which the applicants provided medical services.

PAR. 9. As a result of the acts, practices, and methods of competition hereinabove alleged, in the greater Pittsburgh area:

- (a) competition among physicians has been restrained;
- (b) competition among HMOs has been restrained;
- (c) entry of HMOs into physician services markets and the growth of HMOs have been restrained;
- (d) HMO physicians have been denied access to important hospital facilities; and
- (e) consumers under the care of HMO physicians have been denied access to important hospital facilities.

PAR. 10. The acts, practices, and methods of competition alleged herein, individually and in conjunction with each other, constitute unfair methods of competition and unfair acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act by the respondent herein.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 5 of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid

draft of complaint, a statement that the signing of said judgment is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the matter and having determined that it had reason to believe that the respondents have violated said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent, Forbes Health System Medical Staff, is an association organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, and located at 500 Finley St., Pittsburgh, Pennsylvania.
2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That the following definitions shall apply in this order:

A. "Respondent" or "the Medical Staff" means the Forbes Health System Medical Staff, its successors and assigns. The Medical Staff is an unincorporated association consisting of that group of medical physicians, osteopathic physicians, dentists and podiatrists who are granted privileges by the Forbes Health System to attend patients in the Forbes Health System.

B. "Forbes" means Forbes Health System, a corporation organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania.

C. "Health Maintenance Organization" means an organization which, in return for advance periodic payments, accepts contractual responsibility to provide or arrange for the provision of a stated range of health care services to an enrolled population.

D. "Applicant" means any medical physician, osteopathic physi-

cian, dentist or podiatrist who applies for appointment to the Medical Staff to attend patients in the Forbes Health System.

E. "Effective date of this order" means the date of issuance of the Commission's decision and order with respect to this matter.

F. "Completed application" means submission of the application form and all documentation required by the Bylaws of the Medical Staff.

II.

It is further ordered, That respondent shall not directly or indirectly enter into, adhere to, promote or follow any course of conduct, practice or policy, or any agreement or understanding, having the purpose or effect of

(a) excluding any applicant from appointment to the Medical Staff by reason in whole or in part of the fact that such applicant practices medicine, osteopathic medicine, dentistry, or podiatry to any extent on other than a fee-for-service basis, or by reason in whole or in part of the fact that such applicant is associated in any way with a Health Maintenance Organization;

(b) delaying final recommendation by the Medical Staff on the appointment to the Medical Staff of any applicant beyond the first regular quarterly Medical Staff meeting which is eighty or more days after the completed application is submitted, or if the completed application is submitted less than 80 days prior to a regular quarterly medical staff meeting, beyond the end of the next calendar quarter following that in which the completed application is submitted, but in no event beyond 180 days following submission of the completed application; or

(c) according different treatment to a class of Medical Staff members associated in any way with a Health Maintenance Organization, as a result of which the Health Maintenance Organization or any Medical Staff member associated in any way with it may be hindered in or prevented from providing effective patient care at Forbes; *provided, however,* that individual day-to-day hospital staff administrative decisions, such as scheduling and departmental duty assignments on a seniority basis, shall not constitute a violation of this section unless they constitute a pattern of different treatment.

III.

It is further ordered, That within sixty (60) days following the effective date of this order the respondent shall revise the Medical Staff's By-Laws to conform with the requirements of this order.

IV.

It is further ordered, That commencing thirty (30) days after the date of this order the respondent shall mail a copy of this order and of the complaint in this proceeding to each officer and member of the Medical Staff and to each applicant for appointment to the Medical Staff.

V.

It is further ordered, That the respondent shall, within sixty (60) days following the effective date of this order, and thereafter on the first anniversary date of the effective date of this order, and at such other times as the Commission may by written notice to the respondent require, file or cause to be filed with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

VI.

It is further ordered, That the respondent notify the Commission at least thirty (30) days prior to any proposed change in the Medical Staff that may affect compliance obligations arising out of this order.

VII.

It is further ordered, That unless altered, modified, or set aside in accordance with Sections 3.71 and 3.72 of the Commission's Rules of Practice or such similar rules as may be in effect from time to time, this order shall remain in effect for ten (10) years after the effective date of this order.

Interlocutory Order

94 F.T.C.

IN THE MATTER OF

INDIANA FEDERATION OF DENTISTS

Docket 9118. Interlocutory Order, Oct. 16, 1979

ORDER GRANTING INTERVENTION TO STATE OF INDIANA

On August 17, 1979, the United States District Court for the Southern District of Indiana issued a judgment ordering the Commission to allow the State of Indiana, by its Attorney General, to intervene in the above-captioned proceeding. In compliance with that judgment we reverse our earlier denial¹ of intervention.

It is ordered, That the Commission's order of February 5, 1979, is reversed and that the application for intervention by the State of Indiana be, and hereby is, granted.

¹ Order Denying Petition of State of Indiana to Intervene, Dkt. 9118 (February 5, 1979) [93 F.T.C. 231].